

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN**

FILED - GR
November 4, 2014 10:20 AM
TRACEY CORDES, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: ns / 11/4/14 SCANNED BY 11/4/14

Seth Miller

Plaintiff

CASE# 1:14-cv-1117

-v-

Timothy E. Baxter & Associates, P.C.

Defendant

PLAINTIFFS FIRST AMENDED COMPLAINT

Plaintiff, Seth Miller, hereby sues Defendant, Timothy E. Baxter & Associates, P.C.

PRELIMINARY STATEMENT

1. This is an action for damages and injunctive relief brought by Plaintiff against Defendant for violations of the Telephone Consumer Protection Act (TCPA) Sec. 227., 47 USC § 227(b)(1), 47 USC § 227(a) (iii). Fair Debt Collection Practices Act (FDCPA) 15 U.S.C. § 1692e(11).
2. Plaintiff contends that the Defendant, Timothy E. Baxter & Associates, P.C. have violated such laws by repeatedly harassing Plaintiff in attempts to collect an alleged but nonexistent debt.

JURISDICTION AND VENUE

3. The jurisdiction of this Court is conferred by 15 U.S.C. §1681p, 15 U.S.C. §1692k and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. §1367.

4. Venue is proper pursuant to 28 U.S.C. §1391b. Venue in this District is proper in that the Plaintiff resides here, the Defendant transacts business here, and the conduct complained of occurred here.

PARTIES

5. Plaintiff, Seth Miller, is a natural person and is a resident of the State of Michigan.

6. Upon information and belief Defendant, Timothy E. Baxter & Associates, P.C. is a Foreign Corporation, authorized to do business in Michigan.

FACTUAL ALLEGATIONS

7. Defendant placed a call to Plaintiff for an alleged debt.

8. Defendant placed a collection call to Plaintiff's cell phone number 616-773-8830 from telephone number 1 (248) 715-1301.

9. On September 2nd 2014, Timothy E. Baxter & Associates, P.C. violated the TCPA by calling Plaintiff's cell phone with no prior written permission given by Plaintiff.

**COUNT I
VIOLATIONS OF THE TELEPHONE
CONSUMER PROTECTION ACT 47 U.S.C. §227
BY DEFENDANT TIMOTHY E. BAXTER & ASSOCIATES, P.C.**

10. Plaintiff alleges and incorporates the information in paragraphs 1 through 9.

11. Defendant has committed 1 violation of 47 U.S.C. §227(b) (1) (A) and Plaintiff is entitled to damages of \$500 pursuant to 47 U.S.C. §227(b) (3) (B).

12. On September 2nd, 2014 Defendant violated the TCPA by leaving a recorded message on Plaintiffs cell phone without express written consent.

13. Plaintiff and Timothy E. Baxter & Associates, P.C. do not have an established business relationship within the meaning of 47 U.S.C. §227.

WHEREFORE, Plaintiff demands judgment for damages against Timothy E. Baxter & Associates, P.C. for actual or statutory damages of \$500.

COUNT II
VIOLATION OF FAIR DEBT COLLECTION
PRACTICES ACT (FDCPA), 15 U.S.C. §1692
BY DEFENDANT TIMOTHY E. BAXTER & ASSOCIATES, P.C.

14. Plaintiff alleges and incorporates the information in paragraphs 1 through 13.

15. Plaintiff is a consumer within the meaning of the FDCPA, 15 U.S.C. §1692a (3)

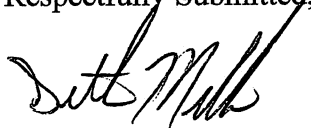
16. Defendant Timothy E. Baxter & Associates, P.C. is a debt collector within the meaning of the FDCPA, 15 U.S.C. §1692a (6).

17. Defendant violated the FDCPA. Defendant violated the following:

(a) Defendant violated 15 U.S.C. § 1692 e(11) Communication fail to contain the mini-Miranda warning: "This is an attempt to collect a debt... communication is from a debt collector."

WHEREFORE, Plaintiff demands judgment for damages against Timothy E. Baxter & Associates, P.C. for statutory damages of \$1,000 any attorney's fees, and costs.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Seth Miller". The signature is written in a cursive style with a large, stylized "M".

Seth Miller

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